

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0079
SALES AND TAX
For Tax Period 2001-2002

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Issue

I. Sales and Use Tax - Sales Tax on ATVs

Authority: IC § 6-8.1-5-1(b), IC § 6-2.5-2-1(a), IC § 6-2.5-2-1(b), IC § 6-2.5-5-15, 45 IAC 2.2-5-21, 45 IAC 2.2-3-5.

The taxpayer protested the assessment of sales tax on sales of ATVs taken out-of-state immediately upon delivery.

II. Sales and Use Tax – Exemption Certificates

Authority: IC § 6-2.5-8-8, 45 IAC 2.2-8-12.

The taxpayer protested the assessment of sales tax when there is purported to be a valid exemption certificate.

III. Sales and Use Tax – Subcontracted Materials Sales

Authority: IC § 6-2.5-2-1.

The taxpayer protested the assessment of sales tax on materials used in subcontracted repairs of boats.

IV. Tax Administration- Ten Percent Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b), 45 IAC 15-11-2(c).

The taxpayer protested the imposition of the ten percent negligence penalty.

Statement of Facts

The taxpayer is a corporation that sells and services motorcycles and all-terrain vehicles (ATVs). The taxpayer also retrieves racing boats from locations around the country. It then repairs the boats and returns them to the owners. Pursuant to an audit, the Indiana Department of Revenue (department) assessed the corporation with additional sales and use tax, penalty, and interest for the tax period 2001-2002. The taxpayer protested some of the assessments and a hearing was held. This Letter of Findings results.

I. Sales and Use Tax –Sales Tax on ATVs and Motorcycles

Discussion

The department assessed sales tax on sales of ATVs where out-of-state customers came into Indiana, purchased the vehicles, and then immediately took the ATVs out-of-state. The taxpayer protested these assessments.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (b).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a). The tax is imposed on the purchaser of the property. The retail merchant collects the tax and holds it in trust until it is remitted to the state. IC § 6-2.5-2-1(b).

The taxpayer argued that the ATVs were exempt from the sales tax pursuant to IC § 6-2.5-5-15 as follows:

Transactions involving motor vehicles, trailers, watercraft, and aircraft are exempt from the state gross retail tax, if:

- (1) upon receiving delivery of the motor vehicle, trailer, watercraft, or aircraft, the person immediately transports it to a destination outside Indiana;
- (2) the motor vehicle, trailer, watercraft, or aircraft is to be titled or registered for use in another state; and
- (3) the motor vehicle, trailer, watercraft, or aircraft is not to be titled or registered for use in Indiana.

The exemption for motor vehicles taken out of state is also discussed at 45 IAC 2.2-5-21 as follows:

The state gross retail tax shall not apply to sales of motor vehicles, trailers, and aircrafts, delivered in Indiana for immediate transportation to a destination outside of Indiana and for licensing or registration for use in another state, and not to be licensed or registered in Indiana.

The exemption upon which the taxpayer based its protest applies to motor vehicles, trailers, watercraft, and aircraft. ATVs are not trailers, watercraft, or aircraft. 45 IAC 22-5-21 also exempts “motor vehicles.” “Motor vehicles” are defined at 45 IAC 2.2-3-5 as “vehicle[s] required to be licensed by the state for highway use in Indiana.” There is no requirement that

ATVs be licensed for highway use in Indiana. Therefore, ATVs are not motor vehicles. Since they are not motor vehicles, they do not qualify for exemption from the sales tax as motor vehicles taken out-of-state.

The department properly assessed sales tax on the sales of ATVs taken out-of-state.

Finding

The taxpayer's protest is denied.

II. Sales and Use Tax – Exemption Certificates

Discussion

At the time of the audit, the taxpayer did not have exemption certificates on file for several purchasers. The taxpayer obtained exemption certificates for some of these purchasers prior to the hearing. The taxpayer protested the tax assessed on sales to purchasers with exemption certificates provided.

IC 6-2.5-8-8 which provides for exemption certificates from sales tax in pertinent part as follows:

(a) A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

45 IAC 2.2-8-12 clarifies the law concerning exemption certificates in pertinent part as follows:

(d) Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. The taxpayer produced valid exemption certificates after the audit but prior to the hearing. The taxpayer is not obligated to pay the sales tax on the sales covered by those certificates.

Finding

The taxpayer's protest is sustained.

III. Sales and Use Tax – Subcontracted Materials Sales

Discussion

The taxpayer subcontracted some of its repair jobs. The vendors who actually repaired the motorcycles, boats, and ATVs provided the labor and materials for the repairs. They then invoiced the taxpayer for the repairs. The taxpayer invoiced its customers listing the amount charged by the vendor plus mark-up. The taxpayer did not collect and remit sales tax on any of the materials used in these repairs as required by IC § 6-2.5-2-1. The department assessed these sales taxes and the taxpayer protested the assessment. The taxpayer did not sustain its burden or proving that this assessment was in error.

Finding

The taxpayer's protest to this assessment is denied.

IV. Tax Administration- Ten Percent Negligence Penalty

Discussion

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department can waive the negligence penalty pursuant to the provisions of 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letter of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer provided substantial documentation indicating that it based its business practices on a previous audit and a previously issued Letter of Findings. After the previous audit, the taxpayer changed its use tax reporting to comply with the law. The totality of the facts in this situation indicate that the taxpayer used reasonable care, caution, and diligence in the filing and remitting of sales and use taxes to the state.

FINDING

The taxpayer's protest to the imposition of the negligence penalty is sustained.